

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       WILLIAM BELL,

Case No.: 2:19-cv-00609-APG-NJK

4               Petitioner

**ORDER**

5       v.

6       WILLIAMS, et al.,

7               Respondents

8  
9               Petitioner William Bell has submitted a pro se 28 U.S.C. § 2254 petition for a writ of  
10 habeas corpus. ECF No. 1-1. His application to proceed in forma pauperis (ECF No. 1) is  
11 granted. Bell’s petition is second and successive, and therefore, it is dismissed.

12              “Before a second or successive application . . . is filed in the district court, the applicant  
13 shall move in the appropriate court of appeals for an order authorizing the district court to  
14 consider the application.” 28 U.S.C. § 2244(b)(3)(A). Where a petition has been dismissed with  
15 prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on  
16 the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. §  
17 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396  
18 F.3d 1049, 1053 (9th Cir. 2005).

19              Bell indicates on the face of his petition that he seeks to challenge the state judgment of  
20 conviction in case no. C-221724. ECF No. 1-1, p. 2. I take judicial notice of the court’s docket.  
21 Bell previously filed in this court case no. 3:11-cv-000741-LRH-WGC, in which he challenged  
22 the same state judgment of conviction. On June 8, 2012, that petition was dismissed as untimely  
23 and judgment was entered. *See* 3:11-cv-000741-LRH-WGC, ECF Nos. 16, 17. Bell filed a

1 notice of appeal, and on November 8, 2012, the Ninth Circuit Court of Appeals denied a  
2 certificate of appealability. *Id.* at ECF Nos. 21, 25.<sup>1</sup>

3       This petition, therefore, is a second or successive habeas corpus petition. *Henderson*, 396  
4 F.3d at 1053. Bell was required to obtain authorization from the Ninth Circuit Court of Appeals  
5 before he could proceed. *See* 28 U.S.C. § 2244(b)(3). He has not indicated that he has received  
6 such authorization from the court of appeals. Thus, this petition will be dismissed with  
7 prejudice. Reasonable jurists would not find my conclusion to be debatable or wrong, and I will  
8 not issue a certificate of appealability.

9       IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (**ECF**  
10 **No. 1)** is **GRANTED**.

11       IT IS FURTHER ORDERED that the Clerk shall **DETACH and FILE** the petition (ECF  
12 No. 1-1).

13       IT IS FURTHER ORDERED that the petition is **DISMISSED**.

14       IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

15       IT IS FURTHER ORDERED that the Clerk shall add Aaron D. Ford, Nevada Attorney  
16 General, as counsel for respondents.

17       IT IS FURTHER ORDERED that the Clerk shall **electronically serve** the petition, along  
18 with a copy of this order, on the respondents. No response by respondents is necessary.

19       IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (**ECF**  
20 **No. 2)** is **DENIED** as moot.

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23 <sup>1</sup> Thereafter, Bell filed case number 3:14-cv-00028-LRH-WGC, which was dismissed as a  
successive petition. *See* 3:14-cv-00028-LRH-WGC, ECF Nos. 8, 9. The Ninth Circuit denied a  
certificate of appealability in that case. *Id.* at ECF No. 12.

1 IT IS FURTHER ORDERED that the Clerk shall **ENTER JUDGMENT** accordingly  
2 and close this case.

3 Dated: May 29, 2019

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5 Andrew P. Gordon  
6 United States District Judge  
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